

(2001) 07 DEL CK 0164

In the Delhi High Court

Case No : IA 4021 of 2001 in Suit No. 426/96

Grover Leasing Ltd.

APPELLANT

Vs

LML Fibres Ltd. and ors

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : (2001) 07 DEL CK 0164

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : S.K. Khanna, for the Appellant; R. Ranthanam and R.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—No person has a right to slow the process of law. Whenever such an attempt is made and it comes to the notice of the court the court would indeed use the long arm of law and not allow the person concerned to abuse the process of law. The facts of the present case would indeed indicate on the same lines. A civil suit has been filed by M/s Grover Leasing Ltd against the defendants including M/s LML Limited, defendant no.3, for recovery of Rs.10,97,895/-. On 20th September, 1996 the learned counsel for defendant no.3 (shri Nalin Talwar) had put in appearance and the Joint Registrar (O) directed that written statement by defendant no.3 be filed within six weeks. On 18th March, 1997 the plaintiff was directed to supply copies of the last three documents to the learned counsel for defendant no.3 and this order was repeated on 9th July, 1997. Written statement had still not been filed. on 17th September, 1997 before the Joint Registrar (O) the learned counsel for the plaintiff pointed that copies of the documents have been sent to defendant no.3 but written statement had not been filed. Needless to mention that on 17th September, 1997 there was no appearance on behalf of defendant no.3.

2. On 17th September, 1998 once against the plaintiff was directed by Joint

Registrar (O) to supply copies of the guarantee bond to the counsel for defendant no.3 within a week. The matter was adjourned for filing of the written statement of defendant no.3. On 14th May, 1998, which was the next date of hearing before the Joint Registrar (O) written statement had still not been filed and that the said right has since been lost.

3. On behalf of defendant no.3 is 4021/2000 has been preferred. Defendant no.3 has pleaded that on 14th December, 1999 the plaintiff was to file the affidavit and the documents were to be exhibited and that on 15th February, 2000 the Joint Registrar (O) had directed the plaintiff shall take steps to summon the documents from the bank and affidavit by way of ex parte evidence was to be filed.

4. The grievance of the defendant no.3 has been that he was earlier being represented by Shri Nalin Talwar. The said counsel did not inform defendant no.3 in proper manner as a result of which the written statement could not be filed by defendant no.3. Defendant no.3 is a public limited company and was under the impression that matter was being perused by the said counsel properly. The right to file the written statement has been lost because of the lapse on the part of the earlier counsel. Plea was raised that defendant no.2 has already been directed to be wound up. On basis of these broad facts it was prayed that defendant no.3 may be allowed to file the written statement and participate in the proceedings of the civil suit. He may be allowed to cross-examine the witnesses of the plaintiff. In this process, prayer was made to recall the earlier orders in this regard.

5. The application as such has been opposed. It has been pointed that number of opportunities has been granted to defendant no.3 to file the written statement but it had failed to comply the orders of the court and in this process lost the said right. It was denied that there is any bona fide mistake on the part of the defendant no.3 or that this right had been lost as a result of some default on the part of the counsel for defendant no.3.

6. As is apparent from perusal of the facts enumerated above, defendant no.3 had put in appearance on 20th September, 1996. After that different adjournments have been claimed but written statement as such was not filed. As all good things come to an end so necessarily the court also had to put an end to the adjournments that were being claimed.

7. Blame has been placed on the counsel stating that he had communicated the orders and therefore the defendant no.3 could not file the written statement. Before a person can be allowed to raise the argument that he should not suffer for the fault of the counsel it must be established by some material on the record that the blame has to be placed squarely on the counsel and not the litigant. Assuming for sake of arguments what is being stated is correct still the plea in the peculiar facts of this cannot be accepted. Shri Nalin Talwar had been appearing now and then on behalf of defendant no.3. On 19th August, 1999 he even had informed the Joint Registrar that he would be filing an application

seeking permission to file the written statement still no such application was filed. It cannot Therefore be taken that the said counsel was not taking any interest. On the contrary, defendant no.3 has not placed anything on the record so as to indicate that it had been taking interest and enquiring about the fate of the matter. There is no such correspondence. Conspicuous silence of defendant no.3 is a pointer that the said defendant has himself to blame. This plea Therefore must fail.

8. During the course of submissions it was urged that the Joint Registrar (O) could not pass an order refusing defendant no.3 to file the written statement. It becomes unnecessary for this court to go into question of controversy in the facts of the present case. Reasons are not far to fetch. On 14th December, 1999 this court had passed the following order:-

Written statement has not been filed by the defendant. However, the nature of relief sought in the suit, this is not a suit where a decree under order VIII Rule 10 CPC can be straightaway passed. plaintiff to file affidavit by way of evidence. Original documents be also filed within six weeks.

List the matter before the Joint Registrar for exhibition of documents on 15.2.2000.

The matter be listed thereafter before the Court.

9. Perusal of the order clearly reveals that this court against recorded that written statement has not been filed and further that it is not proper to press Order VIII Rule 10 of the CPC straightaway. Consequently, this is an order of the court whereby further permission had not been granted to file the written statement. Instead it was directed that when written statement is not filed the evidence be led by affidavit. The defendant no.3 has not cared to challenge the said order. Same has become final. At this stage, there is no other reason forthcoming to set aside or go behind the said order. Resultantly it must follow that what is being claimed at the Bar is without merit.

10. For these reasons is 4021/2000 is dismissed. Affidavit as such to be filed and thereafter the document be exhibited. In regard plaintiff may appear before the Joint Registrar on 12th September, 2001.